

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

\_\_\_\_\_  
**SPIRIT AIRLINES, INC.,**

**Plaintiff,**

**vs.**

**24/7 REAL MEDIA, INC.,  
ADVERTISING.COM, INC.  
AMERICA ONLINE, INC., d/b/a/ AOL,  
BURST MEDIA CORPORATION,  
CARROLTON BANK  
CHEAPFLIGHTS (USA), INC.,  
ECHO TARGET, INC., HOTWIRE, INC.,  
INTERCEPT INTERACTIVE, INC.,  
PRICELINE.COM, LLC, RACKSPACE, LTD.,  
SHERMANS TRAVEL INC.,  
SIDESTEP, INC, SMARTER LIVING, INC., et. al.,**

**Defendants.**

**Case No. 07-341 (SLR)**

**ANSWER AND  
AFFIRMATIVE DEFENSES  
OF DEFENDANT  
24/7 REAL MEDIA, INC.**

\_\_\_\_\_  
Defendant 24/7 Real Media, Inc. ("24/7" or "Defendant"), through its undersigned counsel, hereby files its Answer and Affirmative Defenses to the Complaint for Interpleader filed by Plaintiff Spirit Airlines, Inc. ("Spirit" or "Plaintiff") and states as follows:

**AS TO PARTIES**

1. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Complaint and therefore denies same.
2. Admits the allegations s set forth in Paragraph 3 of the Complaint.

3. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Complaint and therefore denies same.

4. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Complaint and therefore denies same.

5. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Complaint and therefore denies same.

6. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Complaint and therefore denies same.

7. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Complaint and therefore denies same.

8. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Complaint and therefore denies same.

9. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Complaint and therefore denies same.

10. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 of the Complaint and therefore denies same.

11. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Complaint and therefore denies same.

12. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Complaint and therefore denies same.

13. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Complaint and therefore denies same.

14. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Complaint and therefore denies same.

15. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Complaint and therefore denies same.

16. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the Complaint and therefore denies same.

17. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 of the Complaint and therefore denies same.

18. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18 of the Complaint and therefore denies same.

19. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 of the Complaint and therefore denies same.

20. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 20 of the Complaint and therefore denies same.

21. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21 of the Complaint and therefore denies same.

22. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Complaint and therefore denies same.

**AS TO JURISDICTION AND VENUE**

23. Defendant denies the allegations set forth in paragraph 23 of the Complaint except admits that Plaintiff purports to have brought an action for interpleader pursuant to Fed. R. Civ. P. Rule 22, and for statutory interpleader under the Federal Interpleader Act, 28 U.S.C.A. § 1335.

24. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24 of the Complaint and therefore denies same.

25. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 25 of the Complaint and therefore denies same.

26. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26 of the Complaint and therefore denies same.

### **AS TO FACTS**

#### **A. Agreement Between Eisner and Spirit Airlines**

27. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 27 of the Complaint and therefore denies same and respectfully refers the Court to the Advertising Agreement, dated September 15, 2005 and attached as Exhibit "A" to the Complaint (the "Advertising Agreement"), as the document speaks for itself.

28. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 of the Complaint and therefore denies same and respectfully refers the Court to the Advertising Agreement as the document speaks for itself.

29. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29 of the Complaint and therefore denies same and respectfully refers the Court to the Advertising Agreement as the document speaks for itself.

30. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 30 of the Complaint and therefore denies same and respectfully refers the Court to the Advertising Agreement as the document speaks for itself.

31. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 31 of the Complaint and therefore denies same and respectfully refers the Court to the Advertising Agreement as the document speaks for itself.

32. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 32 of the Complaint and therefore denies same.

33. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33 of the Complaint and therefore denies same and respectfully refers the Court to the Advertising Agreement as the document speaks for itself.

34. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 34 of the Complaint and therefore denies same and respectfully refers the Court to the Advertising Agreement as the document speaks for itself.

35. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 35 of the Complaint and therefore denies same and respectfully refers the Court to the Advertising Agreement as the document speaks for itself.

36. Defendant lacks knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 36 of the Complaint and therefore denies same.

**B. As to Communications Spirit Airlines  
Received from Carrollton Bank and Other Defendants**

37. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 37 of the Complaint and therefore denies same and respectfully refers the Court to the letter from Robert J. Parsons, II, counsel for Carrollton Bank, dated November 14, 2006 and attached as Exhibit "B" to the Complaint, as the document speaks for itself.

38. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 38 of the Complaint and therefore denies same and respectfully refers the Court to the letter from Robert J. Parsons, II, dated November 20, 2006 and attached as Exhibit "C" to the Complaint (the "Parsons Letter"), as the document speaks for itself.

39. Defendant lacks knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 39 of the Complaint and therefore denies same.

40. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 40 of the Complaint and therefore denies same and respectfully refers the Court to the form letter from Spirit, dated December 12, 2006 and attached as Exhibit "D" to the Complaint (the "Spirit Letter"), as the document speaks for itself.

41. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 41 of the Complaint and therefore denies same and respectfully refers the Court to the Spirit Letter as the document speaks for itself.

42. Defendant lacks knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 42 of the Complaint and therefore denies same.

43. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 43 of the Complaint and therefore denies same and respectfully refers the Court to the letter from Tribal Fusion, dated December 22, 2006 and attached as Exhibit "E" to the Complaint, as the document speaks for itself.

44. Defendant lacks knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 44 of the Complaint and therefore denies same.

45. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 45 of the Complaint and therefore denies same and respectfully

refers the Court to the e-mail from America Online, dated January 11, 2007 and attached as Exhibit "F" to the Complaint, as the document speaks for itself.

46. Defendant lacks knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 46 of the Complaint and therefore denies same.

47. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 47 of the Complaint and therefore denies same and respectfully refers the Court to the letter from counsel for Carrollton Bank, dated January 22, 2007 and attached as Exhibit "G" to the Complaint (the "January 22<sup>nd</sup> Letter"), as the document speaks for itself.

48. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 48 of the Complaint and therefore denies same and respectfully refers the Court to the letter from counsel for Carrollton Bank, dated February 9, 2007 as the document speaks for itself.

49. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 49 of the Complaint and therefore denies same and respectfully refers the Court to the list prepared by Siquis, Ltd., dated January 24, 2007 and attached as Exhibit "H" to the Complaint, as the document speaks for itself.

50. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 50 of the Complaint and therefore denies same and respectfully refers the Court to the e-mail from Hotwire, Inc., dated January 29, 2007 and attached as Exhibit "I" to the Complaint, as the document speaks for itself.

51. Defendant lacks knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 51 of the Complaint and therefore denies same.



52. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 52 of the Complaint and therefore denies same and respectfully refers the Court to the letter from counsel for Carrollton Bank, dated February 2, 2007 and attached as Exhibit "J" to the Complaint (the "February 2<sup>nd</sup> Letter"), as the document speaks for itself.

53. Defendant lacks knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 53 of the Complaint and therefore denies same.

54. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 54 of the Complaint and therefore denies same and respectfully refers the Court to the February 2<sup>nd</sup> Letter as the document speaks for itself.

55. Defendant lacks knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 55 of the Complaint and therefore denies same.

56. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 56 of the Complaint and therefore denies same and respectfully refers the Court to the letter from counsel for Carrollton Bank, dated February 8, 2007 and attached as Exhibit "K" to the Complaint, as the document speaks for itself.

57. Defendant lacks knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 57 of the Complaint and, therefore denies same.

58. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 58 of the Complaint and therefore denies same and respectfully refers the Court to the letter from counsel for Carrollton Bank, dated February 9, 2007 and attached as Exhibit "L" to the Complaint (the "February 9<sup>th</sup> Letter"), as the document speaks for itself.



59. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 59 of the Complaint and therefore denies same and respectfully refers the Court to the February 28, 2007 reconciliation prepared by Spirit and attached as Exhibit "M" to the Complaint (the "Spirit Reconciliation"), as the document speaks for itself.

60. Defendant lacks knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 60 of the Complaint and therefore denies same.

61. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 61 of the Complaint and therefore denies same and respectfully refers the Court to the Spirit Reconciliation as the document speaks for itself.

62. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 62 of the Complaint and therefore denies same and respectfully refers the Court to the Spirit Reconciliation as the document speaks for itself.

63. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 63 of the Complaint and therefore denies same and respectfully refers the Court to the February 9<sup>th</sup> Letter as the document speaks for itself.

**C. As to the Deposit of Funds**

64. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 64 of the Complaint and therefore denies same.

65. Defendant admits the allegations set forth in paragraph 65 of the Complaint and avers that it is entitled to not less than \$97,737.34.

66. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 66 of the Complaint and therefore denies same.

67. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 67 of the Complaint and therefore denies same.

68. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 68 of the Complaint and therefore denies same.

69. The allegations set forth in paragraph 69 of the Complaint do not require a response.

**AS TO COUNT I**

**Interpleader Under 28 U.S.C.A. § 1335 and  
Rule 22 of the Federal Rules Of Civil Procedure**

70. Defendant repeats and incorporates its responses to Paragraphs 1 through 69 of the Complaint as if fully set forth herein.

71. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 71 of the Complaint and therefore denies same.

72. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 72 of the Complaint and therefore denies same.

73. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 73 of the Complaint and therefore denies same.

74. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 74 of the Complaint and therefore denies same.

75. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 75 of the Complaint and therefore denies same.

76. The allegations set forth in paragraph 76 of the Complaint do not require a response.

77. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 77 of the Complaint and therefore denies same.

78. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 78 of the Complaint and therefore denies same.

79. Defendant denies the allegations set forth in paragraph 79 of the Complaint.

80. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 80 of the Complaint and therefore denies same.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Plaintiff is not entitled to the recovery of reasonable attorney's fees and costs.

#### **Second Affirmative Defense**

Defendant is entitled to an award of not than not less than \$97,737.34 based upon its outstanding invoices.

#### **Third Affirmative Defense**

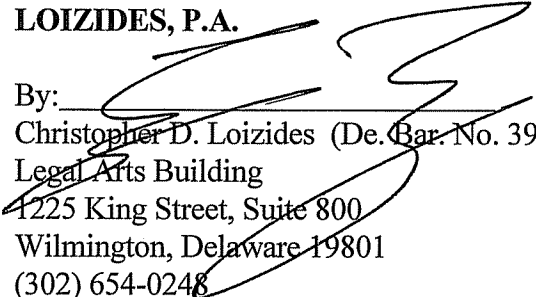
Defendant hereby reserves the right to assert and rely upon such other and further affirmative defenses as may be supported by the facts to be determined by full and complete discovery.

**WHEREFORE**, Defendant 24/7 Real Media, Inc. respectfully requests: (i) a judgment in favor of 24/7 Real Media, Inc. in an amount not less than \$97,737.34 based upon its outstanding invoices, (ii) an award of costs and disbursements, including reasonable attorneys' fees, incurred by 24/7 Real Media, Inc. in defense of this action, and (iii) all such other and further relief as the Court deems just and proper.

Dated: December 17, 2007

Respectfully submitted,

**LOIZIDES, P.A.**

By:   
Christopher D. Loizides (De. Bar. No. 3968)  
Legal Arts Building  
1225 King Street, Suite 800  
Wilmington, Delaware 19801  
(302) 654-0248

-and-

**MORAN • KARAMOUZIS LLP**

Andrew P. Karamouzis, Esq. (AK 9332)  
265 Sunrise Highway, Suite 61  
Rockville Centre, New York 11570  
(516) 678-6660

Attorneys for Defendant  
24/7 Real Media, Inc.

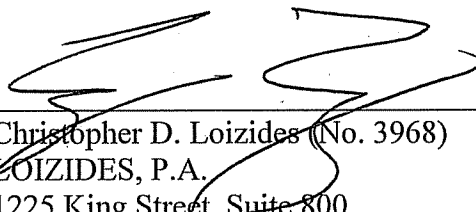
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SPIRIT AIRLINES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 07-cv-00341 SLR
	)	
24/7 REAL MEDIA, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**CERTIFICATE OF SERVICE**

I, Christopher D. Loizides, hereby certify that on the 17<sup>th</sup> day of December, 2007, I did cause to be served true and correct copies of the foregoing **Answer and Affirmative Defenses of Defendant 24/7 Real Media, Inc.** on the parties listed on the attached service list as indicated thereon.

DATED: December 17, 2007

  
\_\_\_\_\_  
Christopher D. Loizides (No. 3968)  
LOIZIDES, P.A.  
1225 King Street, Suite 800  
Wilmington, DE 19801  
Telephone: (302) 654-0248  
Facsimile: (302) 654-0728  
E-mail: [loizides@loizides.com](mailto:loizides@loizides.com)

**SERVICE LIST**

**FIRST CLASS MAIL**

Kathleen P. Makowski  
Saul Ewing LLP  
222 Delaware Ave. # 1200  
P.O. Box 1266  
Wilmington, DE 19899

Robert J. Stearn, Jr.  
Richards, Layton & Finger  
One Rodney Square  
P.O. Box 551  
Wilmington, DE 19899

Edward M. McNally  
Morris James LLP  
500 Delaware Avenue, Suite 1500  
P.O. Box 2306  
Wilmington, DE 19899-2306

Katherine L. Mayer  
McCarter & English, LLP  
Renaissance Centre  
405 N. King Street, 8<sup>th</sup> Floor  
Wilmington, DE 19801

Robert Parsons  
Rogers Moore & Rogers, LLP  
6 South Calvert  
Baltimore, MD 21202

William D. Sullivan  
4 East 8<sup>th</sup> St., Suite 400  
Wilmington, DE 19801

Christopher D. Loizides  
Loizides & Associates  
Legal Arts Building  
1225 King Street, Suite 800  
Wilmington, DE 19801

Erica N. Finnegan  
Cross & Simon, LLC  
913 North Market Street, 11<sup>th</sup> Floor  
Wilmington, DE 19801

Amy Denise Brown  
Brian A. Sullivan  
Robert Drake Wilcox  
Werb & Sullivan  
300 Delaware Ave., 10<sup>th</sup> Floor  
P.O. Box 25046  
Wilmington, DE 19899

Adam R. Elgart  
Mattleman, Weinroth & Miller, P.C.  
200 Continental Drive, Suite 215  
Newark, DE 19713